

October 2019
Standard Agreement
Work by Utility
**INDIANA DEPARTMENT OF TRANSPORTATION
HIGHWAY UTILITY AGREEMENT**

Agreement Amount: \$917,563.50 Des No: 1173627
Agreement Type: Standard (LPA) Project No: 1173627
Work Description: Road Reconstruction Road: Lindberg Road
including storm sewer and appurtenances County: Tippecanoe

This Agreement, made and entered into, by and between (include full entity name and address)

Vectren

1 N. Main Street

Evansville, IN 47711

(hereinafter referred to as the Utility,) and Tippecanoe County, State of Indiana, acting by and through its appropriate elected officials, hereinafter called the "LPA".

WITNESSETH:

WHEREAS, LPA desires to improve Lindberg Road as referenced by the Des No. and Project No. given above (hereinafter referred to as the "project"); and

WHEREAS, due to said highway construction certain adjustments, removals, alterations, and/or relocations of the existing facilities of the Utility will have to be made as shown on the plan marked Exhibit "A" attached hereto and incorporated by reference; and

WHEREAS, LPA has determined the Utility to be eligible for reimbursement; and

WHEREAS, the State of Indiana, through the Indiana Department of Transportation (INDOT) will recommend approval of this project, if applicable, to the Federal Highway Administration for construction with funds apportioned to INDOT under Title 23, United States Code and Acts amendatory thereof and supplementary thereto; and

WHEREAS, it is in the best interest of the Utility and LPA for the Utility to make the necessary adjustments, removals, alterations, and/or relocations of its existing facilities, as shown on said Exhibit “A” with the Utility’s regular construction and maintenance forces.

NOW, THEREFORE, in consideration of the premises and the mutual agreements and covenants herein contained and the adequacy of consideration as to each of the parties to this agreement is hereby mutually acknowledged, and other good and valuable considerations, the receipt is hereby acknowledged and intending to be legally bound the Parties hereby covenant and agree as follows:

SECTION 1 – DESCRIPTION OF WORK AND ITEMIZED COST ESTIMATE

The Utility shall: make the necessary adjustments, removals, alterations and/or relocations to its existing facilities as further shown in Exhibit “A”, attached hereto and incorporated by reference in the following manner: **[Check the following that applies]**

☐ With its regular construction or maintenance crew and personnel at its standard schedule of wages and working hours.

☐ By an approved contractor, as set forth in 23 CFR 645.109 and/or 645.115.

The preliminary itemized cost estimate for this project is set forth in attached exhibit “B”, incorporated by reference, and prepared in accordance with the Policy Guide.

Exhibit “B” shall include an itemized estimate of all anticipated cost, including, but not limited to, materials, labor, equipment cost, preliminary and construction engineering cost, administrative cost, eligible property cost, and/or contracted services. Each item shall be shown as a ‘per unit’ cost.

SECTION 2 – WORK COMMENCEMENT

The Utility shall not start work on the adjustments, removals, alterations and/or relocations covered by this Agreement until written authorization has been given the Utility by LPA or until a satisfactory starting date has been established with the LPA.

SECTION 3 – SUBORDINATION OF RIGHTS

[Check the following that applies]

☐ The existing facilities are located on public right-of-way.

☐ The existing facilities are not located on public right-of-way

If such facilities are located on property, other than public right-of-way, and the Utility either has an easement thereon or a continuing right to maintain the facilities in that location, the Utility, for and in consideration of this Agreement, shall subordinate the Utility's rights herein to those of the LPA in the highway right-of-way by executing a subordination Agreement.

SECTION 4 – MATERIAL ALTERATIONS DUE TO CHANGED AND UNFORESEEN CIRCUMSTANCES

The Utility shall modify its facilities in accordance with the plans, specifications, and estimates shown in Exhibits "A" and "B". No work shall be performed by the Utility beyond the scope contemplated by Exhibits "A" and "B" without prior written authorization by LPA.

In the event there are changes in the scope of work, extra work, or major change in the planned work covered by the approved agreement, plans and estimate, the Utility shall inform LPA as soon as practical upon discovery. The Utility shall also notify LPA of any material alterations due to unforeseen circumstances as soon as practical upon discovery. Such notification shall consist of a letter, telephone call, or other electronic communication confirmed by letter to the following address:

Tippecanoe County Highway Department
20 North Third Street
1st Floor; Attn: Stewart Kline
Lafayette, IN 47901

Said communication shall include sufficient information to indicate the nature of the changed or unforeseen circumstances, the location of the changed or unforeseen circumstances, and the impact of the changed or unforeseen circumstances upon the Utility's relocation efforts, cost of the relocation, the time necessary to complete the relocation, and the extent of relocation.

SECTION 5 – PAYMENTS

All payments shall be made by LPA in arrears in conformance with State fiscal policies and procedures and by electronic funds transfer to the financial institution designated by the Utility in writing unless a specific waiver has been obtained from the LPA. No payments will be made in advance of receipt of the goods or services that are the subject of this agreement except as otherwise agreed by the parties in writing.

Except as otherwise provided in this agreement, the LPA shall reimburse the Utility for the actual cost of the above work performed by it which is estimated to be Five Hundred Forty Nine Thousand Two Hundred Seventy Eight dollars and ninety cents (549,278.90). The Utility shall be responsible for the actual cost of the above work performed by it to improve and upgrade facilities which is estimated to be Three Hundred Sixty Eight Thousand Two Hundred Eighty Four Thousand dollars and sixty cents (368,284.60).

SECTION 5 (A) – STANDARD PAYMENT METHOD

LPA shall reimburse the Utility for any item of work or expense involved if performed at the written direction of the LPA. The LPA shall reimburse the Utility for actual cost of the work completed upon presentation of a valid invoice.

This Utility may submit one invoice per calendar month for work covered by this agreement. The Utility shall attach an itemization of cost incurred with each invoice. This itemization of cost shall appear in the same form and manner as the preliminary estimate as shown on Exhibit “B”.

Within forty-five (45) days after receipt of a valid invoice from the Utility and the approval thereof by the LPA, the LPA will reimburse the Utility for its actual expenses. If the LPA does not agree with the amount invoiced by the Utility, the LPA will send the Utility a letter by regular mail and list the differences. The letter will be sent to the Utility’s address as shown on page 1 of this agreement, or such subsequent address that the Utility may give to the LPA’s authorized representative.

Making a partial payment shall not abrogate the LPA’s right to dispute in good faith the Utility’s claim for compensation. Such good faith disputes shall be resolved upon presentation of the Utility’s final contract invoice and the resolution of any audit performed according to Section 8 of this agreement.

SECTION 5 (B) – LUMP SUM PAYMENT METHOD

The Utility may elect to petition LPA for payment of relocation expenses by Lump Sum. Such petition shall include Exhibits “A” and “B” along with a detailed explanation requesting payment by lump sum and showing how all individuals will be best served by such payment method.

LPA may make payment by lump sum if the total cost for relocation does not exceed \$100,000.00. Lump sum payments in excess of \$100,000.00 will be made only if in the best interest of the public in accordance with 23 CFR 645.113(f) and approved by the Federal Highway Administration.

If a lump sum payment is approved, the Utility shall submit one Contract Invoice no later than ninety (90) days after relocation work is completed. The LPA shall issue reimbursement within forty-five (45) days after receipt of a valid Contract Invoice. No amount in excess of agreed amount in Exhibit “B” shall be reimbursed.

SECTION 6 – COST INCREASES

An invoice that increases the total invoiced project cost above the amount shown in Exhibit “B” shall not be approved until LPA has issued another purchase order or an advice of change (AC) order to cover the increased cost of relocation. If the invoice causes the total invoiced project cost to exceed the amount shown in Exhibit “B” by more than 10%, the invoice shall not be approved until the Utility submits a revised estimate and justification for the additional cost of relocation. The Utility acknowledges that until the above conditions are met LPA may return any invoice submitted by the Utility which when totaled with previous invoices paid (or to be paid) by LPA exceeds the amount shown in Exhibit “B” by more than 10%.

LPA shall make every effort to expedite the payment of any approved cost increase above the amount originally agreed upon.

SECTION 7 – FINAL BILL

The utility shall present its final contract invoice accompanied by an itemized cumulative invoice within ninety (90) days of completion of its work. All documents required to substantiate any claims for payment shall be submitted with this final contract invoice. Such supporting documentation shall include, but shall not be limited to, copies of material invoices, time sheets, vendor and/or contractor invoices and other such documents as may be deemed necessary by LPA to support such invoice.

SECTION 8 – RECORDS

The accounts and records of the Utility and any contractor or subcontractor involved in carrying out the proposed work shall be kept in such manner that they may be readily audited and actual cost determined, and such accounts shall be available for audit by auditors of LPA, and the Federal Highway Administration for a period of not less than three (3) years from the date final payment has been received by the Utility in accordance with 23 CFR 645.117.

In the event of a dispute with regard to the allowable expenses or any other issue under this Agreement, the Utility shall thereafter continue to maintain the accounts and records until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired.

Upon completion of the Utility’s work, the LPA may audit the Utility’s records to determine the cost of relocation. Such audit shall be in accordance with generally accepted auditing standards and the appropriate cost principles as set forth in 48 CFR part 31.

Final payment shall be in accordance with LPA’s resolution of the final audit. If additional money is due the Utility, LPA shall make payment to the Utility within forty-five (45) days after the audit resolution is approved by LPA. If the audit resolution shows that the Utility has been overpaid, LPA shall bill the Utility for such overpayment and provide supporting documentation. The Utility shall pay LPA within forty-five (45) days after receipt of such bill. If the Utility has not paid such bill within forty-five (45) days, LPA may offset such amount against claims that the Utility has against LPA.

SECTION 9 – BINDING UPON SUCCESSORS OR ASSIGNS

This agreement shall be binding upon the parties and their successors and assigns.

SECTION 10 – GENERAL LIABILITY PROVISIONS

The Utility for itself, its employees, agents and representatives, shall indemnify, protect and save harmless the Indiana Department of Transportation, and the State of Indiana from and against any and all legal liabilities and other expenses, claims, cost, losses, suits or judgments for damages, or injuries to or death of persons or damage to or destruction of property (hereafter “Claim”), arising out of intentional tortious acts or whether due in whole or in part to the negligent acts or omissions of the Utility, its employees or agents or contractors, in relation to or in connection with any work performed or to be performed pursuant to this agreement, provided however, that where the LPA has been found liable by a court, tribunal or governing body entitled to make such a determination for intentional tortious acts and/or negligence with respect to the occurrence or occurrences giving rise to the Claim, the Utility shall have no duty to indemnify, protect, or save harmless either the Indiana Department of Transportation or the LPA.

SECTION 11 – INCORPORATION OF THE UTILITY POLICY GUIDE

The Policy Guide forms an essential part of this agreement, and the terms or provisions of this agreement in no way abrogate or supersede the terms or provisions set forth in said Policy Guide.

SECTION 12 – PENALTIES / INTEREST / ATTORNEY’S FEES

LPA will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest, and/or attorney’s fees, except as required by Indiana law.

SECTION 13 – COMPLIANCE WITH LAWS; APPLICABLE LAW

The UTILITY agrees to comply with all federal, state and local laws, rules, regulations, or ordinances that are applicable at the time the UTILITY's services pursuant to this Contract are rendered, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any Indiana or federal statute or the promulgation of regulations there under after execution of this Contract shall be reviewed by the Office of the Indiana Attorney General and the UTILITY to determine whether the provisions of this Contract require formal amendment.

This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

SECTION 14 – COMPLIANCE WITH TELEPHONE SOLICITATIONS ACT

As required by IC 5-22-3-7:

- (1) The UTILITY and any principals of the UTILITY certify that
 - (A) The UTILITY, except for de minimis and nonsystematic violations, has not violated the terms of
 - (i) IC 24-4.7 [Telephone Solicitation of Consumers],
 - (ii) IC 24-5-12 [Telephone Solicitations], or
 - (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
 - (B) The UTILITY will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.
- (2) The UTILITY and any principals of the UTILITY certify that an affiliate or principal of the UTILITY and any agent acting on behalf of the UTILITY or on behalf of an affiliate or principal of the UTILITY:
 - (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
 - (B) Will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

SECTION 15 – CONFLICT OF INTEREST

- A. As used in this section:

"Immediate family" means the spouse and the unemancipated children of an individual.

"Interested party," means:

 1. The individual executing the Contract;
 2. An individual who has an interest of three percent (3%) or more of UTILITY, if UTILITY is not an individual; or
 3. Any member of the immediate family of an individual specified under subdivision 1 or 2.

"Commission" means the State of Indiana Ethics Commission.
- B. LPA may cancel this Contract without recourse by UTILITY if any interested party is an employee of the State of Indiana.
- C. LPA will not exercise its right of cancellation under section B above if the UTILITY gives LPA an opinion by the Commission indicating that the existence of this Contract and the employment by the State of Indiana of the interested party does not violate any statute or code relating to ethical conduct of LPA employees. LPA may take action, including cancellation of this Contract consistent with an opinion of the Commission obtained under this section.
- D. UTILITY has an affirmative obligation under this Contract to disclose to LPA when an interested party is or becomes an employee of the State of Indiana. The obligation under this section extends only to those facts that UTILITY knows or reasonable could know.

SECTION 16 – DRUG-FREE WORKPLACE CERTIFICATION

The UTILITY hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace, and that it will give written notice to the Indiana Department of Transportation and the Indiana Department of Administration within ten (10) days after receiving actual notice that an employee of the UTILITY has been convicted of a criminal drug violation occurring in the UTILITY's workplace.

False certification or violation of the certification may result in sanctions including, but not limited to, suspension of Contract payments, termination of the Contract and/or debarment of contracting opportunities with the State of Indiana for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total Contract amount set forth in this Contract is in excess of \$25,000.00, UTILITY hereby further agrees that this Contract is expressly subject to the terms, conditions and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all contracts with and grants from the LPA of Indiana in excess of \$25,000.00. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the UTILITY and made a part of the contract or agreement as part of the contract documents.

The UTILITY certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying their employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the UTILITY's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and
- B. Establishing a drug-free awareness program to inform their employees of (1) the dangers of drug abuse in the workplace; (2) the UTILITY's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace.
- C. Notifying all employees in the statement required by subparagraph (a) above that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) notify the UTILITY of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying in writing the LPA within ten (10) days after receiving notice from an employee under subdivision (c)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (c)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of

drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency; and

- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (a) through (e) above.

SECTION 17 – FUNDING CANCELLATION CLAUSE

When the LPA makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, the Contract shall be canceled. A determination by the LPA that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

SECTION 18 – NON-DISCRIMINATION

- A. Pursuant to I.C. 22-9-1-10, the Utility and its Contractor and subcontractors, if any, shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Contract, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of this Contract.
- B. The UTILITY understands that INDOT is a recipient of federal funds. Pursuant to that understanding, the UTILITY and its Contractor and subcontractors, if any, agree that if the UTILITY employs fifty (50) or more employees and does at least \$50,000.00 worth of business with INDOT and is not exempt, the UTILITY will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The UTILITY shall comply with Section 202 of executive order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of Contract.

SECTION 19 – DEBARMENT AND SUSPENSION

The UTILITY certifies, by entering into this agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this agreement by any federal agency or department agency or political subdivision of the State of Indiana. The term “principal” for the purposes of this agreement is defined as an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the UTILITY.

SECTION 20 – CERTIFICATIONS FOR FEDERAL-AID CONTRACTORS LOBBYING ACTIVITIES

The UTILITY certifies, by signing and submitting this Contract, to the best of its knowledge and belief that the UTILITY has complied with Section 1352, Title 31, U.S. Code, and specifically, that:

- A. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal Contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal Contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The UTILITY also agrees by signing this Contract that it shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly. Any person who fails to sign or file this required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

SECTION 21 - APPROVAL OF ATTORNEY-GENERAL

This Agreement shall not be effective unless and until it is approved by the LPA or an authorized representative, as to form and legality.

SECTION 22 - ETHICS

The UTILITY and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code § 4-2-6 et seq., the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the UTILITY is not familiar with these ethical requirements, the UTILITY should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at [<<<http://www.in.gov/ethics/>>>](http://www.in.gov/ethics/). If the UTILITY or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this contract immediately upon notice to the UTILITY. In addition, the contractor may be subject to penalties under Indiana Code § 4-2-6-12.

SECTION 23 – NON-COLLUSION

The undersigned attests, subject to the penalties for perjury, that he/she is the contract party, or that he/she is the representative, agent, member or officer of the UTILITY that he/she has not, nor has any other member, employee, representative, agent or officer of the firm, company, corporation or partnership represented by him/her, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of the Contract.

SECTION 24 - BUY AMERICA CERTIFICATION

The Utility agrees that all steel and cast iron materials and products to be used under this agreement will be produced and manufactured in the United States of America pursuant to the requirements of 23 CFR 635.410

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IN WITNESS HEREOF, the parties hereto separately and severally have caused this instrument to be executed in their respective names by and through their duly authorized officers.

THE UTILITY:

(Utility Name)

(Signature of Officer)

Date

(Officer's Name, Printed or typed)

(Officer's Position)

FOR:

Tippecanoe County Commissioners

BY:

Tracy A. Brown, President

Date

Thomas P. Murtaugh, Vice President

Date

David S. Byers, Member

Date